

IN THE MATTER OF:)
)
)
North Dakota State Board of Medical)
Examiners - Investigative Panel B)
)
Complainant,)
)
)
vs.)
)
)
Miles J. Jones, M.D.,)
)
)
Respondent.)

On November 20, 2001, a Complaint was filed with the North Dakota Board of Medical Examiners ("Board") by its Investigative Panel B, requesting revocation of the license to practice medicine in North Dakota of the Respondent, Miles J. Jones, M.D. of Lee's Summit, MO. ("Jones"). Investigative Panel B experienced considerable difficulty in serving Jones, but the Complaint was finally served on Jones on March 20, 2002. *See* Affidavit of Service attached to Complaint (the Complaint was served by a process server).

The Complaint alleges as grounds for administrative action violations of N.D.C.C. § 43-17-31(6) and (21). Specifically the Complaint alleges that Jones has engaged in a continued pattern of inappropriate care within the meaning of N.D.C.C. § 43-17-31(21), and that Jones has engaged in the performance of dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public within the meaning of N.D.C.C. § 43-17-31(6), in that Jones has repeatedly written prescriptions for patients over the internet without first examining the patient or obtaining appropriate information from the patient.

On April 4, 2002, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings ("OAH") to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On April 8, 2002, the undersigned ALJ was designated to preside.

On April 15, 2002, the ALJ issued a Notice of Hearing which scheduled a hearing. The hearing was held as scheduled on May 15, 2002, in the Office of Administrative Hearings, Bismarck, North Dakota. Special Assistant Attorney General, John M. Olson, represented Investigative Panel B. He called six witnesses to testify. He offered 18 exhibits as evidence, all of which were admitted. Jones was not present at the hearing; neither was Jones represented at the hearing.

On May 14, 2002, the ALJ received from Jones a "Respondent's Brief in Support of Motion to Dismiss," "Motion to Dismiss," proposed "Order to Dismiss," and several attached pages from two North Dakota cases, which Jones claims supports his arguments regarding the Motion to Dismiss. Investigative Panel B did not have time to respond to Jones' motion prior to the hearing, but did respond, through counsel, at the hearing.

During the course of the hearing, the ALJ received a facsimile "Motion to Continue Hearing." Jones faxed the motion to the ALJ's office, OAH, at 10:09 a.m. on May 15, 2002. OAH Support staff immediately brought it into the hearing. The hearing was scheduled to start at 9:00 a.m. and did start at 9:00 a.m. At the hearing, Investigative Panel B, through counsel, also responded to Jones' Motion to Continue Hearing.

Jones claims in his Brief in Support of Motion to Dismiss that the Board has no subject matter jurisdiction over the Complaint action before it regarding him. Jones does acknowledge that the Board has personal jurisdiction over him, however. As to subject matter jurisdiction,

Jones claims, *inter alia*, that because in the Complaint Investigative Panel B does not allege that "patients who allegedly received Internet prescriptions involved North Dakota citizens," the Board has no subject matter jurisdiction. He claims that "there must be an injury or complaint raised by a North Dakota resident." Investigative Panel B claims that it does not have to show actual consumers in North Dakota who purchased prescription drugs over the internet, but said that it would make such a showing at the hearing. Investigative Panel B did offer evidence at the hearing regarding North Dakota internet purchasers. Further, Investigative Panel B claims that it need only show a pattern of inappropriate care directed towards North Dakota citizens, not actual injury to someone in North Dakota, and that it need only show conduct likely to deceive, defraud or harm the public in North Dakota, not the actual deceiving, defrauding, or harming of a member of the public in North Dakota. Investigative Panel B cited cases in other jurisdictions to support its argument. The arguments of Investigative Panel B are persuasive and Jones' Motion to Dismiss is DENIED.

In his Motion to Continue Hearing, Jones claims that he is unable to attend the hearing due to a work related scheduling conflict. He claims that his motion is made in good faith and not for the purpose of vexation and delay. His claims are disingenuous. If Jones truly had a work related scheduling conflict, surely he would have known about it prior to 10:09 on May 15, 2002. He said nothing about any concern regarding a work related conflict prior to that time. It appears that he knew about the hearing long before May 15 but had no intention of attending the hearing and, then, at the last minute, he filed a motion to continue in an attempt to delay the hearing process. If he had intended to attend the hearing on the Morning of May 15, he would have had to leave from his home in Missouri before May 15. If he is alleging that this supposed work related conflict came up at the last minute, he should not have even been present in

Missouri at the time the conflict arose. He should have been on his way to the hearing. Further, telephone conference hearings are allowable under law. N.D.C.C. § 28-32-35. Jones did not inquire of the ALJ prior to the hearing about the possibility of conducting his hearing by telephone or about conducting it at a different time. His motion is disingenuous and untimely. The hearing was over an hour old before the ALJ learned of his motion. The ALJ did not and will not continue the hearing pursuant to such tactics. The Motion to Continue Hearing is DENIED.

As noted above there was some difficulty in serving Jones with the Complaint. There was apparently some difficulty in serving him with the Notice of Hearing, too. The ALJ served Jones by certified mail; however, the return receipt (green card) was not returned to OAH. But, neither was the envelope containing the Notice of Hearing returned to OAH. When OAH support staff checked with the U.S. Post Office about the location of the green card, they were informed that the Post Office had no record of the document being served by certified mail. The certification number did not show up on their tracking system.

Nevertheless, clearly, Jones actually received both the Complaint and the Notice of Hearing. *See* exhibit 5, a letter from Jones in which he acknowledges receiving the Complaint. Jones filed a Motion to Dismiss the Complaint. He clearly had the Complaint when he drafted this motion. Jones filed a Motion to Continue Hearing. He clearly had the Notice of Hearing when he filed this motion. It remains unclear what happened to the green card after service of the Notice of Hearing, but it is clear that actual service has been obtained on Jones, both of the Complaint and the Notice of Hearing.

Based on the evidence presented at the hearing and the and the oral argument made by counsel for Investigative Panel B, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Jones is currently licensed to practice medicine in the state of North Dakota, under license No. 7255. *See* exhibits 1 and 2. Jones is currently also licensed to practice medicine in the states of Montana, Ohio, Alaska, Oklahoma, Nevada, North Carolina, South Carolina, Delaware, Rhode Island, Kansas (Inactive), Connecticut, Alabama, Georgia, Missouri, Indiana, Tennessee, Pennsylvania, West Virginia, Illinois, and Virginia. Exhibit 3.
2. Jones admits prescribing "certain medications via the internet to patients" but he claims to be prescribing "only after obtaining appropriate information from the patient." Exhibit 5; *see* exhibits 4 and 17.
3. Jones has prescribed drugs on the internet through several web site vehicles, including "Net Doctor International" or the "NET Doctor Group." Exhibits 15 and 17.
4. The NET Doctor Group is a private company which uses a physician-designed world wide web site to collect patient information and medical history relevant to prescribing certain prescription drugs. It uses a questionnaire or information form on the web site for this purpose. The physician is associated with but not employed by the NET Doctor Group. The physician reviews the provided medical history on a fee-for-service basis for the NET Doctor Group. Exhibit 17.
5. On April 25, 2002, an undercover North Dakota Bureau of Criminal Investigation agent, using a fictitious name, placed an internet order from Bismarck, North Dakota for the

prescription drug Cipro with Net-Dr (Net Doctor International). Testimony of BCI Agent and Exhibit 15. The agent filled out the questionnaire or form on the web site providing certain requested information. The agent's credit card was billed by NET DOCTOR GROUP, \$50.00 for the onsite consultation fee and \$150.00 for the Cipro prescription. Exhibit 15. The package containing the Cipro prescription was shipped to the agent and is in the process of being reshipped after some confusion regarding the first delivery. *Id.* Several drugs are available from the NET-Dr web site, including Viagra, Xenical, Propecia, Celebrex, Vaniqa, and Cipro. *Id.* All of the information that the agent placed on the form was correct, except his name and address was fictitious. He used an undercover name and address. There was no place on the form used by the agent where a purchaser could indicate why he needed the drug Cipro. *Id.* The agent was able to order what he wanted for dosage and number of tablets. The shipper of the package of the Cipro prescription to the agent was shipping from a drop box in California. The agent was not contacted by any physician, pharmacist, or representative of Net Doctor International, or any pharmacy, regarding his purchase of Cipro.

6. Investigative Panel B received a printout through a Pennsylvania investigative agency showing all of the prescription drugs approved and prescribed by Jones through a Community Drug of Pittsburgh PA, during the time period of July 7, 1998, through November 27, 2000. Exhibit 18. The printout shows, on page 140, that on February 8, 2000, a prescription was filled by Community Drug, prescribed by Jones, for 90 capsules of Xenical to a person in Bismarck, ND. *Id.* Community Drug has been one of the pharmacies used in the internet operations participated in by Dr. Jones. *See e.g.*, exhibits 12, 13, and 14.

7. In June 1999, the State of Kansas, through its Attorney General and the Kansas Board of Pharmacy brought an action in the District Court of Shawnee County Kansas against Jones and

others, alleging, *inter alia*, that Jones prescribed Viagra for Angelia Crawford in the State of Kansas without conducting an examination or actual consultation to determine medical need for Viagra and to explain the proper administration, potential side effects, dangers and contraindications of Viagra; and that Jones engaged in the practice of the healing arts within Kansas by prescribing and ordering prescription-only medications, including Viagra, to persons located within the State of Kansas, and that he had not been licensed to engage in the practice of the healing arts in violation of Kansas law. Exhibit 7; *see* exhibit 6, affidavits of Angelia Crawford, with attachments from the internet, etc.

8. Pursuant to Motion for Judgment by Default, on October 29, 2001, the District Court of Shawnee County Kansas entered a Journal Entry of Default Judgment against Jones and others finding and concluding, *inter alia*, that Jones did not file an answer in the state's action, ordering that judgment be entered against Jones for engaging in unlawful unconscionable acts and practices in violation of the Kansas Consumer Protection Act, enjoining Jones from engaging further in unconscionable acts and practices, enjoining Jones from unlawful advertising, sell, prescribing, dispensing, and delivering of prescription-only drugs to consumers in Kansas, and assessing a \$10,000 civil penalty against Jones. Exhibit 7.

9. In January 2002, Jones, through counsel, filed a "Motion to Set Aside Default Judgement" (*sic*) and "Memorandum in Support of Motion to Set Aside Default Judgement" (*sic*) in the District Court of Shawnee County, Kansas. Exhibit 7. There was no evidence offered at the hearing as to the final disposition of this motion.

10. In an affidavit attached to the above January 2002 memorandum, Jones admits providing medical expertise, consultation and services to an independently owned and operated website where individuals may request prescription medications. He admits that Angelia, a female, accessed the website and completed a questionnaire; that she requested a prescription for

Viagra, complaining of difficulty reaching arousal; that he personally reviewed the questionnaire; and that utilizing his medical expertise he determined the prescription would be appropriate, prescribing 10 tablets of Viagra. Exhibit 7.

11. On January 21, 2002, Steven Rohland, a Consumer Protection Investigator with the Wisconsin Department of Regulation and Licensing completed a questionnaire at the internet site "Net-Dr," and ordered Viagra, 10 tablets, for \$99.00, plus a \$50.00 consultation fee. He did not speak on the phone with anyone and no physician called him. On January 28, 2002, he received a prescription bottle containing 10 Viagra tablets from Giannotto's Pharmacy in Newark, NJ. The physician listed is Miles Jones, DEA # BJ0839540. That DEA number belongs to Dr. Miles J. Jones of Lee's Summit, MO. Exhibit 8; testimony of Steven Rohland. Besides alleging the above activity, one of the allegations of the subsequent Complaint filed by the State of Wisconsin against Jones was that a 14 year old under FBI supervision was able to obtain, with the use of a credit card, a prescription for Viagra from "Net-Dr," prescribed by Jones as the reviewing physician. Testimony of Mr. Rohland.

12. On July 25, 2001, James G. Rawson, Project Coordinator, Internet Clearinghouse, Federation of State Medical Boards of the United States, Inc., completed a questionnaire at the internet site "Net-Dr" and ordered Xenical (weight loss medication), 90 tablets (3 refills), for \$145.00, plus a \$50.00 consultation fee. He did not speak on the telephone to anyone and a physician did not contact him. A pharmacy filled the prescription and mailed it to him. Jones prescribed the Xenical for Rawson. Exhibit 9. *See* exhibit 11, November 13, 2001, Jones letter (he admits filling the prescription to Rawson).

13. On August 3, 1999, Investigator Ann E. Meredith conducted a search of the internet for web sites purporting to sell Viagra (PLD) and other popular PLDs. Exhibit 12. *See*

also 13, 14, and 18, and testimony of Ann E. Meredith, Investigator, State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Enforcement Bureau. Meredith identified American Medicine.com as one such entity. On August 4, 1999, Meredith, using the fictitious identity of Mary Czubek, completed an American Medicine Online Consultation form, answered several health-related questions and then ordered 90 Xenical capsules over the internet. The total cost of the order was \$235.00, including a \$70.00 consultation fee, \$150.00 for the medication, and \$15.00 for shipping. Immediately after submitting the form, she received a screen response indicating her request was received and would be evaluated by a U.S. licensed physician within one business day. On August 5, 1999, she received two e-mail messages from American Medicine indicating that she was approved to receive Xenical and that her credit card would reflect a charge to "A Fresh Life" in California. On August 11, 1999, Meredith again visited the American Medicine web site using the fictitious identity of John Czubek. She completed an American Medicine Online Consultation form, answered several health-related questions and then ordered 60 Zyban tablets (smoking cessation medicine) over the internet. The total cost of the order was \$191.50, including a \$70.00 consultation fee, \$102.50 for the medicine, and \$19.00 for shipping. Immediately after submitting the form, she received a screen response indicating her request was received and would be evaluated by a U.S. license physician within one business day. The response further stated that she would be notified of the outcome of the consultation within two business days. On August 17, 1999, she received an e-mail message from American Medicine, dated August 12, 1999, indicating that she was approved to receive Zyban and that her credit card would reflect a charge to "A Fresh Life" in California.

On August 6, 1999, Meredith received a package containing Xenical. The prescribing physician was listed as "Dr. Jones, M." On August 18, 1999, Meredith received a package containing Zyban. The prescribing physician was listed as "Dr. Jones, M." *See* Exhibit 13 (investigators in New Jersey determined that "Dr. Jones, M" was Dr. Miles Jones of Lee's Summit, MO); *see* also testimony of G. Robert Kern, State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs.

On the questionnaire forms submitted for obtaining the Xenical and Zyban, Meredith purposely did not respond to some of the questions, *i.e.*, she left the form incomplete. Meredith testified that she wanted to see if the form would be accepted even though it was incomplete. No one contacted Meredith to inquire about questions that were unanswered and a physician did not contact her.

14. Guy Tangedahl, M.D., Bismarck, a family practitioner testified as an expert witness for Investigative Panel B. He reviewed most of the exhibits entered into evidence in this matter involving the Complaint against Jones and said that he was familiar with the practice of prescribing drugs over the internet. He said that his concerns about this practice were the inherent dangers of prescribing medicine to people that the physician does not know (he said there is no doctor/patient relationship in internet prescribing), the heightened risk of dispensing medicines for inappropriate uses, and the ease of obtaining prescription drugs over the internet. He said that adequate safeguards need to be in place for internet prescribing of drugs to prevent abuses. He said that adequate safeguards were not in place for the cases he reviewed in which Jones was involved.

15. Dr. Tangedahl further testified that Jones breached the standard of care required, *i.e.*, community standards, in North Dakota for physicians prescribing drugs; Jones' actions have

the potential to place his patients at risk; and, basically, Jones provided inappropriate care to his internet patients. He further testified that Jones by prescribing drugs over the internet engaged in unprofessional conduct likely to deceive, defraud, or harm the public.

CONCLUSIONS OF LAW

1. Jones is currently licensed to practice medicine in the State of North Dakota under the provisions of N.D.C.C. ch. 43-17. As such his practice of medicine in North Dakota is subject to the provisions of N.D.C.C. chs. 43-17 and 43-17.1, including those provisions relating to disciplinary action found in N.D.C.C. §§ 43-17-30.1 and 43-17-31.

2. N.D.C.C. § 43-17-31 states, in part, as follows:

43-17-31. **Grounds for disciplinary action.** Disciplinary action may be imposed against a physician upon any of the following grounds:

6. The performance of any dishonorable, unethical or unprofessional conduct likely to deceive, defraud, or harm the public.

21. A continued pattern of inappropriate care as a physician ...

3. Jones has repeatedly written prescriptions for patients over the internet, including North Dakota patients, without first examining the patient or obtaining all appropriate information from the patient. It is clear that his actions in doing so place patients in North Dakota and elsewhere at risk. Although it may be possible to write prescriptions for patients over the internet if adequate safeguards are in place, adequate safeguards were not in place for Jones to write prescriptions in the cases that are the subject of this Complaint. Accordingly, the

evidence shows, by the greater weight of the evidence, that while licensed as a North Dakota physician, Jones has engaged in a continued pattern of inappropriate care for patients in North Dakota and elsewhere within the meaning of N.D.C.C. § 43-17-31(21); and Jones has engaged in the performance of dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public within the meaning of N.D.C.C. § 43-17-31(6). At the very least, Jones is providing inappropriate care for patients by prescribing drugs for them over the internet without adequate information or adequate safeguards. Also, prescribing drugs for patients over the internet without adequate information or adequate safeguards is unprofessional conduct that is likely to deceive, defraud, or harm the public. It is not necessary that actual harm, fraud, or deceit caused by Jones be shown. It is sufficient that harm, fraud, or deceit is likely to be caused by him because of his internet activities. In this case, the evidence is clear that harm, fraud, or deceit is likely to be caused.

4. N.D.C.C. § 43-17-30.1 authorizes the Board to impose one or more of several types of disciplinary action against Jones, including revocation, for proven violations of N.D.C.C. § 43-17-31.

5. N.D.C.C. § 43-17-31.1 authorizes the Board in disciplinary proceedings in which disciplinary action is imposed against a physician to also direct the physician to pay to the Board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panels in the investigation and prosecution of the case.

RECOMMENDED ORDER

The greater weight of the evidence shows that Jones violated the provisions of N.D.C.C. § 43-17-31(6) and (21). At the conclusion of the evidentiary portion of the hearing, counsel for

Investigative Panel B recommended that because of the proven violations the Board revoke Jones' North Dakota license. The ALJ concurs and hereby recommends that the Board order REVOCATION of Jones' North Dakota license to practice medicine. Also, the ALJ recommends that the Board order Jones to pay a sum, to be determined by the Board, not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the Board and its investigative panel in the investigation and prosecution of this case. If the Board orders Jones to pay reasonable and actual costs, it shall indicate by separate letter attached to its final order an amount and a manner for payment of those costs.

Dated at Bismarck, North Dakota, this 22nd day of May, 2002.

State of North Dakota
Board of Medical Examiners

By: _____
Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260